

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-1243

To be argued by
DOMINIC F. AMOROSA

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1243

UNITED STATES OF AMERICA,

Appellee,

—v.—

WILLIAM H. HOCKRIDGE, CHARLES PETRI, and
STEPHEN EASTON,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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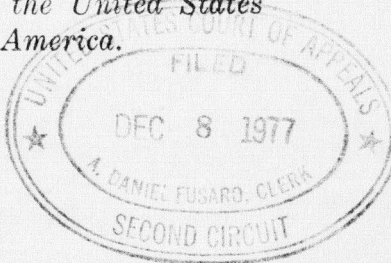




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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

William H. Hockridge, Charles Petri and Stephen Easton appeal from judgments of conviction entered against Hockridge and Petri on April 12, 1977, and against Easton on June 15, 1977, in the United States District Court for the Southern District of New York after an eight week trial before the Honorable Dudley B. Bonsal, United States District Judge, and a jury.

Indictment 76 Cr. 843, filed August 27, 1976, charged the three appellants, and George Flynn, George Whitney and Larence Rapport in twenty-four counts with various violations relating to the federal banking laws. Count One charged all defendants with conspiracy (a) to misapply the moneys of the Chemical Bank, (b) to prepare and submit false financial statements to obtain loans

from the Chemical Bank and the Bank of New York and (c) to make false entries in the books and reports of the Chemical Bank, in violation of Title 18, United States Code, Section 371. Count Two charged each defendant with misapplying and assisting in the misapplication of approximately \$1,145,000 in moneys of the Chemical Bank in violation of Title 18, United States Code, Sections 656 and 2. Counts Three through Seventeen charged each defendant with preparing and assisting in the preparation of various false corporate financial statements submitted to the Chemical Bank and the Bank of New York to induce corporate loans in violation of Title 18, United States Code, Sections 1014 and 2. Counts Eighteen through Twenty-Four charged each defendant with making and assisting in the making of false entries in the books and reports of the Chemical Bank in violation of Title 18, United States Code, Sections 1005 and 2.

Trial commenced against Hockridge, Petri, Easton, Flynn and Rapport on December 2, 1976.* On February 8, 1977, the day summations were scheduled to begin, Rapport was severed because his attorney had been injured in an automobile accident.** The jury's deliberations concluded on February 18, 1977, with their having reached verdicts as to all defendants on Counts One through Four, Eight, Ten through Fourteen, Seventeen, Twenty and Twenty-one. Hockridge and Easton were found guilty on Counts One and Two and acquitted on all other counts on which the jury reached a verdict. Petri was found guilty on Counts One, Two and Eight and

* The remaining defendant, George Whitney, pleaded guilty to the conspiracy count prior to trial and testified for the Government.

** On June 6, 1977 Rapport was found guilty in a separate trial of Count Six charging him with assisting in the preparation of a false financial statement submitted to the Chemical Bank.

acquitted on all other counts on which the jury reached a verdict. Flynn was acquitted on all counts on which the jury reached a verdict.*

On April 12, 1977 Hockridge was sentenced by Judge Bonsal on Count One to nine months' imprisonment. Hockridge was sentenced on Count Two to three years imprisonment, execution of which was suspended, and he was placed on probation for three years to commence upon his release from confinement. Petri was sentenced by Judge Bonsal on each of Counts One and Two to four years' imprisonment, the sentences to run concurrently. On Count Eight Petri was sentenced to two years' imprisonment, the sentence to run concurrently with those on Counts One and Two.

On June 15, 1977, Judge Bonsal sentenced Easton on Count One to six months' imprisonment and fined him \$5000. Judge Bonsal suspended sentence on Count Two and placed Easton on probation for three years following his release from confinement.

All of the defendants are at liberty pending appeal.

Statement of Facts

A. The Government's Case

1. Introduction

The Government's proof, presented through the testimony of 43 witnesses and thousands of exhibits, established a single conspiracy among the defendants and others from September 1971 through August 1972 to

* Although the jury did not indicate it was deadlocked as to the remaining counts, they were discharged by Judge Bonsal after six full days of deliberations.

defraud the Chemical Bank and the Bank of New York of approximately \$5,000,000 by means of a fraudulent loan scheme based upon the submission to these banks of numerous false corporate financial statements.

From September 1971 through June 1972 Hockridge, an assistant Vice President and loan officer of the Chemical Bank, approved over twenty corporate loans totalling in excess of \$1,300,000 for various shell and worthless companies controlled by Petri, the mastermind of the scheme. These loans, based upon false financial statements or no financial statements at all, resulted in losses to the Chemical Bank of over \$1,100,000. Some of the loans approved by Hockridge were made to corporations which were incorporated on the same day or a few days before the loans were granted for the sole purpose of securing additional loans. On one occasion Hockridge granted a corporate loan to one of Petri's corporations before the corporation was incorporated. For his efforts in approving these loans, Hockridge received from Petri, Easton and others \$14,000, which Hockridge directly diverted to himself from one of the fraudulent corporate loans he approved to one of Petri's worthless corporations; a \$3000 mink coat for his wife; the services of prostitutes for \$300 per week, a pool table, golf clubs and a concealed interest in Petri's "mini-conglomerate." To cover-up and conceal the phony loan scheme from his superiors at the Chemical Bank, Hockridge falsified numerous bank reports.

Easton, a certified public accountant and an officer in many of Petri's worthless companies which secured the loans, prepared most of the false financial statements submitted to the Chemical Bank. Easton also assisted Petri in coercing secretaries and other employees of Petri's shell companies to sign promissory notes as officers of various shell companies which obtained the corporate loans.

In June 1972 Easton personally negotiated a \$150,000 loan from the Bank of New York for one of the "corporations" which had already received a \$75,000 loan from Hockridge. The loan was granted after Easton prepared and submitted two totally false financial statements to a duped loan officer of the Bank of New York; the loan was never repaid.

Easton, like his co-defendants, had a substantial stock interest in Cine-Prime Corp., the company which purportedly owed Petri's other worthless companies which received corporate loans.

The ultimate objective of the defendants was to give the false appearance to members of the investing public that Cine-Prime Corp. and its subsidiaries were viable corporate entities in order that the public could be duped into purchasing the stock of Cine-Prime or one of its subsidiaries.

2. The Conspiracy Begins

In June 1971, Petri and his business associate Flynn entered into an agreement to purchase a debt-ridden public corporation known as Zavala-Riss Productions, Inc. ("Zavala-Riss"). The purchase agreement called for Petri and Flynn to pay \$20,000 to the owners of Zavala-Riss in addition to paying-off approximately \$70,000 in debts of the corporation. Although Petri and Flynn never fulfilled their promises, they thereafter represented that they owned Zavala-Riss, whose name Petri had changed on November 24, 1971 to Cine-Prime Corp. (Tr. 1914-54, 2089; GX 57(b)-81(a)-(c)).*

* "Tr." refers to the trial transcript; "GX" refers to Government exhibits, and App. refers to the appellants' appendix.

It was Petri's intent at this time to build a mini-conglomerate by taking the stock of Zavala-Riss and using it to acquire other financially depressed corporations, to rebuild these companies by an infusion of capital and ultimately to sell the stock of Zavala-Riss to the public for large amounts of money. (Tr. 1555-64).

Shortly after the purchase of Zavala-Riss, Petri began to build the mini-conglomerate. In September 1971 Petri and Flynn, with the assistance of Robert Fillet, an individual Petri hired as a consultant, acquired a financially stagnant corporation known as Comprehensive Sports Planning, Inc. ("CSPI") by promising the stockholders of CSPI an exchange of their holdings for stock in Zavala-Riss. (Tr. 1576-81).

At the time of the take-over of CSPI, Easton was a minority stockholder of this corporation and its accountant. Shortly after Petri's take-over of CSPI Petri explained his "get rich quick" scheme to Easton who agreed to be the accountant for Petri's mini-conglomerate. Easton would receive a salary and a substantial amount of the stock in Zavala-Riss. (Tr. 1583-87).*

By the end of September 1971 Petri acquired for his mini-conglomerate two additional corporations: (1) Simon and Flynn Communications, Inc., which was formed in May 1971 and (2) the Flynn Group, Inc., which was incorporated in August 1971. (Tr. 1581).

In the Fall of 1971, Petri learned that Hockridge, the loan officer on the CSPI account before Petri acquired CSPI, was being questioned by his superiors at the Chemical Bank in connection with \$35,000 in overdue

* At the time of the stock exchange, Hockridge was a stockholder of CSPI and thereby, subsequent to the exchange, became a stockholder in Zavala-Riss.

loans he had previously approved to a person known as Daniel Sheddric. Petri told Hockridge that he would pay-off the Sheddric loans if Hockridge would approve a corporate loan to one of the corporations within Petri's mini-conglomerate. (Tr. 1572-76). Hockridge agreed to do this and thereafter began to approve additional corporate loans to companies in Petri's mini-conglomerate. Petri also agreed with Hockridge to pay-off another \$23,000 in overdue personal loans which Hockridge had made to the defendant, George Whitney. Petri repaid this loan in the same manner he had repaid the Sheddric loans; he used the proceeds of additional corporate loans approved by Hockridge.* (Tr. 1575, 2906-08; GX 1, 22(a)).

3. The Loans From the Chemical Bank

Beginning in September 1971 through the middle of June 1972 Hockridge approved in excess of twenty corporate loans to Petri's companies. From September 1971 through March 6, 1972, Hockridge had the exclusive authority to grant unsecured corporate loans up to \$50,000. From March 6, 1972 until the time he was dismissed by the Chemical Bank in June 1972, Hockridge had the exclusive authority to approve unsecured cor-

* The method by which Sheddric's personal loans were payed-off is an example of the defendants' misapplication scheme. Hockridge approved a \$75,000 loan to the Oceanic Drug Co., another financially depressed company acquired by Petri. A few days later Hockridge wrote a \$35,000 official check of the Chemical Bank payable to the Cord Automobile Co., another worthless company in Petri's scheme. The \$35,000 which went to Cord was removed by Hockridge from the checking account of Oceanic Drug Co. As soon as the \$35,000 was deposited into the account of Cord, Petri and Easton wrote a \$35,000 check on the account of Cord payable to Sheddric, which check was used to pay Sheddric's \$35,000 loan. (GX 3(m)(1), 11(1), 27(g)).

porate loans up to \$75,000. (GX 23(c)).* Hockridge took full advantage of these authorities in granting loans to corporations controlled by Petri for a total amount, excluding "roll-over" loans, of in excess of \$1,300,000.** (GX 81-81(c)).

It was the defendants' plan to obtain approximately \$5,000,000 in loans from the Chemical Bank by violating the group credits rule, making false entries in bank documents, and submitting false financial records. (Tr. 1639). See *infra* at 8-10.

4. The Group Credits Rule

Although Hockridge had exclusive authority to grant unsecured corporate loans ranging from \$50,000 to \$75,000 to any one corporation during the period of the conspiracy, this authority was limited by what the Chemical Bank called the "group credits rule." This rule precluded Hockridge or any other loan officer from approving loans of an amount in excess of his lending limit to two or more corporations controlled by the same party or parties without getting the approval of other lending officers. Specifically Hockridge was precluded by the group credits rule in 1971 from approving on his own authority to any two companies controlled by Petri loans aggregating over \$50,000. (Tr. 539-43).

To circumvent this rule and to make it appear to Hockridge's superiors that the loans were unrelated,

* Petri bragged that he got Hockridge promoted at the bank as a result of his scheme. (Tr. 1627-28).

** A "roll-over" of a corporate loan occurs when the proceeds of a new corporate loan are used to pay-off the existing loan to the same corporation. Government exhibits 81-81(c), which are reproduced in Easton's appendix, contain a detailed schedule of the Chemical Bank loans approved by Hockridge for Petri's "conglomerate."

Petri and Easton coerced various secretaries and other employees under their control to sign various corporate promissory notes and corporate resolutions as officers of corporations which were to get loans approved by Hockridge. Seven Government witnesses, all former employees of Petri and Easton, testified that they were told or requested by Petri and Easton to sign promissory notes and other papers as officers of various corporations to obtain corporate loans. (Tr. 639-75, 868-82, 1267-1304, 1352-77, 1999-06, 2168-88, 2405-25; GX 81-81c).

After the loans were granted to these "corporations" Hockridge would prepare entirely fictitious reports for the bank loan files representing that shortly before he approved the loan in question he spoke with an officer of the corporation, that is, the secretary or other low-level employee of Petri's and Easton's, about the loans and when it was anticipated they would be repaid. Numerous Government witnesses, all former employees of Petri and Easton, testified that bank reports made by Hockridge, in which he represented that he had talked to them in connection with approximately ten different corporate loans, were false. (Tr. 639-75, 1036-40, 1267-1304, 1406-10, 2742-57, 2719-24, 2405-25, 1943-46, 2913-16).

5. The Financial Statements

For all but two corporate loans which Hockridge approved, Easton prepared unsigned corporate financial statements which he and Petri submitted to Hockridge. Easton placed values on various claimed assets in some of the financial statements by fabricating non-existent purchases of non-existent assets by one company in Petri's mini-conglomerate from another company. Easton told Fillet that he was not concerned about preparing the financial statements because he wasn't signing them. (Tr. 1636-38).

Moreover, Easton dated the financial statements for Todays Store Services on January 31, 1972 when it was not incorporated until February 2, 1972. Easton listed \$261,800 in assets in the Cord Automobile financial statement and \$189,918 in asets in the Talmadge Furniture Co., Inc. financial statement when Petri a few months previously had acquired all of the assets of each company from the bankruptcy court for \$100.00. (Tr. 1440-50; GX 3(f), 14(f), 84-84(g)).

Hockridge was aware that the financial statements submitted to him were false. On one occasion he told Government witness Marvin Burke to "tell Petri and Easton to come down off some of these wild balance sheets." (Tr. 1035). When Burke raised the subject with Petri, Petri told him, "Oh don't worry about Hocky, I will take care of him." (Tr. 1036).

6. The Hockridge Pay-offs

In March 1972 Hockridge received a \$14,000 bribe for his help in granting the loans for Petri's mini-conglomerate.* The bribe was paid by diverting to Hockridge's own checking account \$14,000 of a \$75,000 loan Hockridge had approved for one of Petri's companies.

On March 8, 1972 Hockridge approved a \$75,000 loan to one of Petri's companies, Todays Stores Services, Inc.,

* Hockridge did not limit his assistance to Petri's scheme to approving in excess of one million dollars in loans. Hockridge assisted his partners in their efforts to sell stock to the public or to obtain other bank loans by giving Petri's companies favorable references when contacted by other financial institutions. (Tr. 3838-54; GX 120(J) 120(k)).

which had been incorporated on February 2, 1972. On March 9, 1972, after the \$75,000 was placed into the checking account of Todays Stores Services at the Chemical Bank,* Hockridge personally approved an official check of the Chemical Bank in the amount of \$14,000 payable to the Central Jersey Bank and Trust Co. He did this by withdrawing the \$14,000 directly from the checking account of Todays Stores Services. The check was credited without endorsement to an account controlled by Hockridge and his wife at the Central Jersey Bank and Trust Co. Hockridge used the \$14,000 to buy stocks in an unrelated corporation the same day that Petri, Easton and others did.** (Tr. 2234-95; GX 17, 17(1), 27, 50 (a)-(n)).

In addition to the \$14,000 payoff Hockridge received other bribes and gratuities for his loan approvals. Petri and Easton made him a silent partner in their Cine-Prime operation and, as Easton told Fillet, Hockridge was receiving Cine-Prime stock through a nominee. (Tr. 1626-28, 1637-38). Petri also gave Hockridge a \$3,000 mink coat. (Tr. 2889-95). Hockridge also received from Petri, Easton and their co-defendants from the proceeds of the loans he was approving for Petri's companies the services of prostitutes*** for \$300 a week, a pool table, golf clubs, a lawn mower and other things of value (Tr. 2018-20, 2805-19, 2903-06).

* In all cases when Hockridge approved loans to corporations, checking accounts were formed for those corporations at the Chemical Bank in order to permit Petri and Easton to disperse the proceeds of the loans.

** Petri had attempted to channel the \$14,000 to Hockridge in a less obvious fashion by having his wife write a personal check to Hockridge on their personal checking account; Petri's check bounced. (GX 24(b), 50(a)-(n)).

*** When Whitney discovered that \$300 a week was being spent to supply Hockridge with the services of prostitutes, he asked Petri and Flynn why they were doing this and was told by Petri, "that is how we get our loans." (Tr. 2904-06).

7. The Manipulation of Corporate Loan Proceeds to Pay Other Corporate Loans

Petri, Easton, and Hockridge also manipulated the loan proceeds to create the erroneous impression that the corporations were viable entities doing substantial business. In certain instances one fraudulently obtained loan would be used to pay-off other improperly obtained loans.

Consequently a \$50,000 loan to Zavala-Riss was paid with the proceeds of a \$73,000 loan to Cine-Prime Corp.; the loan to Cine-Prime was never repaid. (GX 1-15). The repayment of the \$50,000 loan to Simon and Flynn Communications on December 10, 1971 was made with the proceeds of the \$50,000 loan to the Cord Automobile Co., Inc. on December 10, 1971. (GX 3-3m, 8 d-e). Thereafter, Hockridge approved an additional \$75,000 in loans to Simon and Flynn Communications, Inc., which were never repaid. (GX 81-81(c)). The repayment of the \$50,000 loan to the Flynn Group on January 13, 1972 was made by a redemption of a \$30,000 certificate of deposit which had been purchased by the Flynn Group with part of the original proceeds of the \$50,000 loan to it, and two \$10,000 checks from Simon and Flynn Communications, Inc. Thereafter, Hockridge approved an additional \$48,500 in loans to the Flynn Group which were never repaid. (GX 8(1), 9, 9(1)(a)). The \$15,000 repayment of the Tax by Telephone loan on June 7, 1972 was made with the proceeds of a \$150,000 loan granted to Todays Stores Services by the Bank of New York, which itself was never repaid. The repayment of the \$75,000 loan granted to Todays Stores Services at the Chemical Bank was made with the proceeds of the \$150,000 loan made to Todays Stores Services by the Bank of New York. (GX 151-o, 171-o; 261-m 6, 81-81c).

Finally, the periodic repayments of the W.B. Service, Inc. loan, totally \$50,000, were made by various trans-

fers to the W.B. Service account at the Chemical Bank from the accounts of Petri's other companies. The money in those accounts was based on loans approved by Hockridge. (GX 5(1), 8(1), 10(1), 18(1)).

8. The Conspiracy Is Exposed At The Chemical Bank

In May 1972, Robert Fillet, an individual previously hired by Petri as a consultant, informed Petri that he was going to the Chemical Bank to expose various improper activities which he believed had occurred in connection with the loans Hockridge had approved, including the fact that Hockridge was a secret partner in Petri's operation. (Tr. 1644-51). After Petri threw Fillet out of his office, Petri, Easton, Flynn and Whitney met in Petri's office where they discussed alternative positions they might take as a result of Fillet's threat to "tell [the Chemical Bank] about the phony loans." * Either Petri or Flynn suggested that Fillet could be discredited with the bank officials by having Fillet arrested for possession of a gun he kept in his apartment. Petri stated that he would notify Hockridge and warn him of Fillet's threat to go to the bank, but that no one had to be concerned about the loans because "nobody is personally responsible." ** (Tr. 2921-24).

On June 23, 1972 Fillet went to the Chemical Bank and exposed the scheme. Subsequently, he was arrested on Petri's complaint, but these charges were dismissed. As a result of Fillet's meeting with bank officials, all of the loans which Hockridge had approved for Petri's com-

* Whitney, who pleaded guilty, testified to these conversations.

** Easton had personally endorsed one of the corporate loans and was sued on his endorsement. Although the Chemical Bank obtained a judgment against him, Easton did not settle with the bank until after he was indicted. (Tr. 537-38).

panies were called due on June 30, 1972 and Hockridge was fired. The bank, however, did not set-off any amounts of money in corporate checking accounts until the due dates on the ninety day loans. By this time there was little money left in the accounts. (Tr. 1649-51, 2513-26; GX 81-81(c)).

9. The Bank of New York Fraud

Because of Fillet's threat to visit Chemical Bank and to expose the fraudulent loan scheme, the defendants realized that they might need to use another bank in order to obtain loans. Therefore, after Fillet's threat to go to the Chemical Bank, but before he actually went, Easton met with John Otis, a commercial loan officer with the Bank of New York. Easton told Otis that he was the treasurer of Todays Stores Services, Inc., which, according to Easton, was a company which both manufactured wedding gowns and sold them through company owned retail stores. Although Todays Stores Services was not even incorporated until February 2, 1972, Easton told Otis that the company had begun doing business at the beginning of 1972. Easton told Otis that Todays Stores Services was part of a group of businesses controlled by Cine-Prime Corp. According to Easton, the group did all its business at Chemical Bank and was growing so rapidly that the principals of Cine-Prime felt that they were outgrowing their need for just one bank and were attempting to expand their banking relationships. Easton also told Otis that Triss Originals, a debt-ridden wedding gown manufacturer taken over by Petri, was the manufacturing prong of Todays Stores Services. Easton concealed from Otis the fact that Triss Originals was then in reorganization under Chapter 11 of the bankruptcy laws. (Tr. 1454-96, 3133-66). Thereafter, Easton introduced Otis to Petri, who related to Otis what Easton had already told Otis. (Tr. 3142-43).

After receiving from Easton two unaudited and false financial statements relating to Todays Stores Services, Inc., Otis agreed to extend a \$150,000 loan to Todays Stores Services.*

Easton provided Otis with a listing of the accounts receivable for Todays Stores Services, which was to act as security for the \$150,000 loan (Tr. 3152-59). Easton concealed from Otis, both in his oral statements to Otis and in the written financials, the fact that the accounts receivable were already pledged to another company. (Tr. 2450-62, 3166-88).**

The proceeds of the \$150,000 were used in part to (1) pay-off the \$75,000 loan approved by Hockridge and granted to Todays Stores Services by the Chemical Bank, from which Hockridge had personally diverted \$14,000 to his own account; (2) to pay a \$15,000 loan approved by Hockridge and granted to "Tax by Telephone", which was Easton's personal tax company; (3) to pay Easton \$2,500; (4) to purchase a brand new cadillac convertible for one of Petri's friends for \$8,926; (5) to pay Jacob Rabinowitz two checks for \$3,100. Rabinowitz was the attorney who had acted for Petri to incorporate all of Petri's new corporations and who had permitted Petri to represent that several of these corporations were headquartered at his law firm. (Tr. 2540-70; GX 17, 17(1), 26(1), 26(m)) (1)-(m) (25)).

* Otis had requested audited financials from Easton but Easton had told him that the financial statements were in the process of completion and Otis would receive a copy as soon as they were finished. (Tr. 3144).

** The financial statements were dated January 31, 1972. Todays Stores Services was not incorporated until February 1972. They were almost identical to the financials Easton had prepared and had submitted to the Chemical Bank (GX 17(f), (f)(1), 26(f)(1), (f)(2)).

In August 1972 the scheme to obtain loans from the Bank of New York also collapsed, when Otis learned that at the time he had approved the \$150,000 loan Triss Originals was in reorganization under Chapter 11, and that the listing of accounts receivables given to him by Easton, which were meant to secure the \$150,000 loan, had been pledged to another company. The Bank of New York called the \$150,000 loan for payment. Neither the \$150,000 loan nor approximately \$8,000 in overdrafts written by Easton and Petri on the checking account of Todays Stores Services at the Bank of New York was ever paid to the Bank of New York. (Tr. 3166-88).

Otis met with Petri in an effort to make the bank whole. Petri suggested to Otis and other representatives of the bank that they advance him more money for some other ideas he had in mind. When told that the bank was not inclined to go along with his proposal, Petri said that if the representatives of the bank took that attitude, there would be no assets left for them. Petri's prophecy was accurate. (Tr. 3168-69).

B. The Defense Case

1. Hockridge

Hockridge testified on his own behalf, presented the testimony of three character witnesses and called a handwriting expert.

Hockridge testified that shortly after he met Petri, he and other bank officers became very impressed with Petri's ideas relating to the acquisition of various companies. (Tr. 3464-70). Thereafter, he began approving loans to corporations controlled by Petri, and his superiors were aware of these loans. Hockridge believed, based

on discussions with other bank officers, that the Chemical Bank's rule on "group credits" was "a matter of interpretation, really". (Tr. 3476-77).

Hockridge denied receiving any bribes or gratuities in connection with the Petri loans. He specifically denied receiving a mink coat from Petri. (Tr. 3503). As to the prostitute, Hockridge claimed that Petri gave him the telephone number of a girl Hockridge later took out. Hockridge claimed that he did not believe the girl was a "professional prostitute," and did not believe that Petri had paid for her services, but did not have knowledge one way or the other. (Tr. 3504).

Concerning the \$14,000 which Hockridge deducted from the proceeds of the Today Stores Services loan, which he had approved, and forwarded to his own account, Hockridge testified that the \$14,000 was a loan from Petri to him to be used to buy stock. Hockridge claimed that after he was fired he paid back the loan to Petri with interest. He identified an original letter from Petri authorizing him to deduct the \$14,000 from the Today Stores Services loan.

Hockridge testified that at no time did he falsify his reports to the bank concerning interviews he had with various people and that he never conspired with anyone to misapply money of the Chemical Bank.

On cross-examination, Hockridge testified that he could not recall whether the girl, whose phone number Petri had given him and with whom he had socialized, had told him her name and he, therefore, did not know whether she was a prostitute. (Tr. 3558-60). After having his memory refreshed by documents, he testified that when he went to Puerto Rico with Petri during the time he was approving loans for Petri's companies, he registered in a hotel and listed his address as the address of Cine-Prime Corp., one of Petri's companies. (Tr. 3614-16).

Hockridge reiterated his denials that he had never received a mink coat from Petri. (Tr. 3818-19).

Hockridge further testified that although he approved a loan in the amount of \$50,000 to the Cord Automobile Co. on December 10, 1971, the proceeds of which were used to pay-off Hockridge's \$50,000 loan to Simon & Flynn Communications Inc. on the same day, he never approved a loan to a corporation knowing that the proceeds would be used to pay-off another corporate loan. (Tr. 3628-31). He testified that he learned that the Cord loan was used to pay-off the Simon and Flynn loan shortly after the loan was paid off and raised the subject with Petri because he was concerned. (Tr. 3631-37). Hockridge also testified that he didn't know that the proceeds of a corporate loan he had approved on May 5, 1972 to Cine-Prime Corp. were going to be used on the same day to pay-off Whitney's personal loans of \$23,000 which had been previously approved by Hockridge. (Tr. 3638-42). Hockridge testified that he did not know at the time that he had approved a \$75,000 loan to the Oceanic Drug Co. that the proceeds of that loan were going to be used in part to pay-off Sheddric's personal loans of \$35,000, which Hockridge had previously approved. (Tr. 3643-46).

When confronted with the testimony of numerous Government witnesses that they did not have conversations with Hockridge, as Hockridge had written in his reports to the bank concerning the loans, Hockridge testified that "he made a few errors". (Tr. 3645-46).

Hockridge testified that in a letter to his superior at the Chemical Bank on June 29, 1972, in which he stated that he was sending the letter "[s]o that there will be no question as to what I have said and what I have left unsaid" concerning "gratuities, payments, or secret benefits" from Petri's group, he did not refer to the \$14,000

"loan" or pay-off he had received from Petri. (Tr. 3737-40; GX 23).

Hockridge's handwriting expert testified that registration cards from the Regency Hotel bearing Hockridge's name in April 1972 were not signed by Hockridge. (Tr. 3417-34; GX 53, 53A). The cards had been admitted during the Government's case. The bills for the rentals were sent to Cine-Prime.

2. Easton

Easton testified in his own defense and presented the testimony of many character witnesses.

Easton denied any participation in a conspiracy. He specifically denied preparing each of the financial statements submitted to the Chemical Bank to induce corporate loans with the exception of the CSPI statements, which did not form the basis of a substantive charge.

He testified that he was merely an employee of Petri's, and like other low-level employees, he was asked by Petri to sign various promissory notes and corporate resolutions as an officer of various corporations which received corporate loans Hockridge had approved.

Easton testified that he never arranged in any manner for the corporate loans mentioned in the Indictment, never prepared financial statements for the corporations and never gave financial statements to the Chemical Bank (Tr. 3801-03).

Regarding the financial statements, which Otis testified Easton had given to him for the Bank of New York loan, Easton testified that he did give these to Otis, but had gotten them from Petri and did not prepare them. (Tr. 4803-05).

On cross-examination Easton repeated his direct testimony to the effect that he was a mere employee of Petri's, that he did what he was told as other employees did what they were told, and that he didn't prepare corporate financial statements for the loans mentioned in the Indictment.

3. Petri

Petri did not testify in his own defense but presented the testimony of Jacob Rabinowitz.

Rabinowitz, an attorney, testified that he represented Petri at various times dating back to 1968 and that during this period he was aware that Petri was negotiating contracts with various celebrities including Mohammed Ali, and George C. Scott. Rabinowitz further testified that after the Chemical Bank called in all of the corporate loans for payment on June 30, 1972, he met with representatives of the bank in an effort to preserve assets of the corporations so that the bank could be paid. (Tr. 3948-55).

On cross-examination Rabinowitz testified that he was not aware that several of Petri's companies, which had received loans approved by Hockridge from the Chemical Bank, were listed in the Bank's records as being headquartered at his law office at 535 Fifth Avenue, New York City. Rabinowitz testified that he never received any correspondence or cancelled checks for these corporate accounts at his office. (Tr. 4091-93). Rabinowitz incorporated most of Petri's companies which received loans from Hockridge a few days after the loan was approved. He also incorporated ZRZ, Ltd. for Petri; ZRZ had received a corporate loan from Hockridge a few days before it existed. (Tr. 4041-44; GX 81-81(c)). For his efforts Rabinowitz received about \$25,000 from Petri's organization. (Tr. 4051-53).

C. The Government's Rebuttal Case

On its rebuttal case the Government produced the mink coat which Hockridge received from Petri in December 1971. Hockridge had previously testified that he never received the coat. The coat was located at a furrier near Hockridge's New Jersey home where Mrs. Hockridge had been storing it since the spring of 1972. (Tr. 5133-53; GX 200, 200a). Hockridge's mink coat had the label removed. (Tr. 5145-46).

ARGUMENT

POINT I

Judge Bonsal Was Correct In Refusing To Set Aside the Verdicts Because of an Allegation of Jury Misconduct.

The defendants contend that Judge Bonsal erroneously denied their motions to set aside the jury's guilty verdicts based upon an interview he conducted with two jurors following the jury's guilty verdicts on Count One. They also argue that additional evidence of juror misconduct during the trial requires the ordering of a new trial. The defendants' arguments must fail because the juror interviews cannot be used to impeach the verdict, and Judge Bonsal made certain during the trial that the jurors would treat all parties fairly and dispassionately.

A. The Defendants Are Not Entitled To a New Trial Based on Interviews of Two Jurors During The Deliberations.

1. Factual Background

The jury began its deliberations on the morning of Friday, February 11, 1977. They deliberated until approximately 9:30 P.M. on Friday night when they were excused and requested to return on Monday morning to continue their deliberations. During their deliberations on Friday the jury asked for and received various exhibits and a repeat of the Court's meticulous charge on the elements of conspiracy. Although the Government requested the Court during the evening to ask the jury for a partial verdict in view of a weekend's interruption in the deliberation process, the Court declined to do so. (Tr. 5860-79).

The jury reconvened its deliberations on Monday, February 14th at 9:30 A.M. and during that day asked for and received numerous exhibits and testimony. At approximately 6:15 P.M. on Monday evening the Court informed counsel that it would shortly ask the jury if it had reached a verdict as to any defendants on Count One, the conspiracy count. Although trial counsel for Petri asked the Court whether there was "any possibility [of] suggesting to your honor that we not yet take a partial verdict", no objection was made to the Court's expressed desire to take a partial verdict or to the principle that the Court is empowered to take partial verdicts pursuant to Rule 31(b), Federal Rules of Criminal Procedure. (Tr. 5880-5901).

Shortly thereafter the Court asked the jury for a partial verdict. The jury announced that Hockridge, Petri, and Easton were guilty on Count One. Only after the Court asked if counsel wanted the jury polled did

Hockridge responded affirmatively. The jury was asked "if they find the defendants . . . guilty on Count One," and each juror responded affirmatively. The guilty verdicts were recorded. The jury was then excused for the evening and instructed to return the following day, Tuesday, February 15th, to resume their deliberations. At no time after the jury rendered its verdict on Monday, February 14th, did any defendant ask that the jury be individually polled as to each defendant. (Tr. 5901-04).

The jury resumed its deliberations on Tuesday, February 15th at 9:30 A.M. During the morning and afternoon additional requested testimony was read to the jury and additional exhibits were sent in to the jury room. (Tr. 5905-09).

At approximately 5 P.M. on February 15th, Judge Bonsal read a note he had received from juror number 4 asking to see him. Defendants requested that Judge Bonsal interview juror number 4 *in camera* to determine why she wanted to speak to him. Not knowing why the juror wanted to see him, Judge Bonsal decided not to speak with the juror *in camera*. At 5:30 P.M. the jury was excused until the next day. (Tr. 5909-19).

At approximately 9:30 A.M. on the morning of Wednesday, February 16, 1977 Judge Bonsal received a note from juror number 3 asking to see Judge Bonsal because she believed she had committed an injustice by rushing into a verdict. (Tr. 5902-21).

With the consent of all counsel, Judge Bonsal conducted an *in camera* interview with jurors 3 and 4. (Tr. 5921-27). The record of this proceeding reflects an effort by the two jurors to impeach their own verdict. Judge Bonsal patiently listened to them, told them that they should not surrender their honest convictions because of other jurors, and that they should resume their de-

liberations. He raised the possibility of further discussions between the Court and the jurors, and he concluded by suggesting that "you raise your points again with the jury about what you think about what they have done and see what they think about that and have an exchange on that." (Tr. 5927-35). At no time after this colloquy between Judge Bonsal and the two jurors did *any* juror in any way suggest that he or she had any doubts about the previously entered guilty verdict on Count One or the other guilty verdicts returned later during the jury deliberations.

Following the interview, and after a detailed discussion of Rule 606(b), Federal Rules of Evidence, Judge Bonsal denied the defendants' motion to set aside the verdict on Count One. He also denied Easton's belated request to have the jury polled individually as to Easton on Count One. (Tr. 5935-53).

The jury continued its deliberations and at 2:30 P.M. found Flynn not guilty on Count One. (Tr. 5953-54). Following the verdict on Count One as to Flynn the jury resumed its deliberations requesting additional exhibits and the recross examination of Easton. They were then excused until 9:30 A.M. on Thursday, February 17th. (Tr. 5954-59).

On the morning of February 17th the jury resumed its deliberations and heard additional requested testimony concerning Easton. (Tr. 5960-66). At 2 P.M. the jury informed the Court that they had reached verdicts on Counts Two, Three and Four. Judge Bonsal took the jury's verdict on these counts over objection against taking a partial verdict. The jury found Easton, Hockridge and Petri guilty on Count Two and Flynn not guilty on this count. All defendants were acquitted on Counts Three and Four. The jury was again polled—this time individually as to Easton—and agreed that these were their verdicts (Tr. 5967-71).

The jury resumed its deliberations for the remainder of the day on February 17th and for the entire day on Friday, February 18th—their sixth day of deliberations. During this period, in addition to hearing more testimony and asking for more exhibits, they rendered additional partial verdicts as to each defendant on nine additional counts, finding all the defendants not guilty as to these counts with the exception of Petri, who was found guilty of Count Eight. (Tr. 5971-6021).

In the early evening of February 18th, the Court discharged the jury although the jury had not reached verdicts on the remaining counts and had not indicated that they were deadlocked. When they were discharged, Judge Bonsal made the following remarks to the jury:

"I think it is quite clear what the proper outcome of this case is, and I am [not] going to ask you to go into all these other counts . . . You have reached a verdict on a good many of these counts and I think it has been perfectly wonderful the way you have been going about it and the way you have thought about it. I think in doing that, you certainly followed the instructions I gave you a week ago last Friday morning." (Tr. 6022).

In response to motions made orally after the jury was discharged and formal post-trial motions to set aside the verdicts based on jury misconduct, Judge Bonsal held that the jurors' statements to the Court during the *in camera* interview following their verdict on Count One could not be considered in a motion to set aside the verdicts. Alternatively, Judge Bonsal found that, even if the jurors' statements could be considered, jurors number 3 and 4 did not "surrender their honest convictions" in finding Hockridge, Petri, and Easton guilty. (Tr. 6041-46; Order-Memorandum, April 12, 1977).

2. Under Applicable Legal Principles the Jurors Cannot Impeach Their Verdict

Defendants argue that Judge Bonsal erroneously held that the statements made by jurors number 3 and 4 could not be used in a motion to set aside the verdict on Count One. Their arguments are specifically foreclosed by Rule 606(b) of the Federal Rules of Evidence, which provides as follows:

"(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other jurors mind or emotions as influencing him to assert to or dissent from the verdict or indictment or concealing his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to a jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes."

Rule 606(b) and its judicial antecedents make plain that all evidence relating to matters occurring during jury deliberations or which influence a juror in his vote is incompetent in a motion to set aside a verdict. This would include evidence of discussions among jurors, intimidation of one juror by another and other intra-jury influences *McDonald v. Pless*, 238 U.S. 264 (1915); *Hyde v. United States*, 225 U.S. 347 (1912); *Mattox v. United States*, 146 U.S. 140 (1892); *United States v. Green*, 523 F.2d 229 (2d Cir.), cert. denied, 423 U.S. 1074 (1975); *United States v. Dioguardi*, 492 F.2d 70, 81, 86 (2d. Cir. 1974); *United States v. Miller*,

403 F.2d 77 (2d Cir. 1968). *United States v. Grieco*, 261, 2d 414 (2d Cir. 1958) (per curiam), cert. denied, 359 U.S. 907 (1959); *United States v. Crosby*, 294 F.2d 928 (2d Cir.), cert. denied, 368 U.S. 984 (1961); *Rotondo v. Isthmian Steamship Co.*, 243 F.2d 581 (2d Cir.), cert. denied, 355 U.S. 934 (1957).

The policy considerations supporting the rule include freedom of deliberations, stability of verdicts, secrecy of jury verdicts, protection of jurors against annoyance, and prevention of fraud by individual jurors who agree upon a verdict in good faith and later assert that they were influenced by improper considerations.* Rule 606, Federal Rules of Evidence, Advisory Committee, Note; *McDonald v. Pless*, supra; *Maddox v. United States*, supra; *United States v. Eagle*, 539 F.2d 1166, 1169-70 (8th Cir. 1976); *Chrensky v. George Washington East Motor Lodge*, 317 F. Supp. 1401, 1403-04 (E.D.Pa. 1970).

Recognizing the direct applicability of Rule 606(b) to their attack on Judge Bonsal's findings, defendants claim an unprecedented exception to its operation. They assert that the jurors' statements should have been considered in this case because at the time they were made, although the jury had returned a verdict on Count One, it was still deliberating on other counts. Simply put, because the jury had only reached a partial verdict and had not yet been discharged, the jurors' statements should have been considered.

Rule 606(b), however, does not begin its effectiveness with the discharge of a jury. *Vizzini v. Ford Motor Co.*, 72 F.R.D. 132, 135-36 (E.D. Pa. 1976). The rule becomes

* The only exception to this clear mandate is that a juror is competent to testify concerning "extraneous prejudicial information" improperly brought to his attention or "whether outside influence was improperly brought to bear upon any juror." Defendants do not contend that any extraneous influence were exerted upon any juror.

effective by its very terms "upon inquiry into the validity of a verdict," which occurred here one day after the verdict on Count One and subsequent to Judge Bonsal's *in camera* interview with the two jurors. Clearly, the policy considerations underlining Rule 606(b) apply to all verdicts, partial or complete.*

Defendants offer no authority for their novel contention that partial verdicts are not covered by Rule 606(b). Indeed, if they were not, a juror who has rendered a partial verdict, and who has been polled on that verdict,** would be free to upset a verdict, be it for

* Defendants' complaint that Judge Bonsal should not have taken a partial verdict on Count One is erroneous. The District Court is empowered by Rule 31(b), F.R. Crim. P. and numerous authorities to accept partial verdicts. See *United States v. De Laughte*, 453 F.2d 908, 910 (5th Cir.), *cert. denied*, 406 U.S. 932 (1971); *United States v. Borash*, 412 F.2d 26, 32 (2d Cir.), *cert. denied*, 396 U.S. 832 (1969); *United States v. Cotter*, 60 F.2d 689, 690-91 (2d Cir.), *cert. denied*, 287 U.S. 666 (1932); see also *United States v. Frankel*, 65 F.2d 285, 288-89 (2d Cir.), *cert. denied*, 290 U.S. 682 (1933). In this case the jury had been deliberating for almost two full days at the time of the partial verdict. As Judge Bonsal noted the jury was not sequestered in the evenings and a serious injury to anyone could have aborted an almost three month trial. (Tr. 5877). Finally, notwithstanding defendants' protestations to the contrary, there was no objection made to taking the partial verdict at the time it was taken. Trial counsel for Petri asked the Court whether there was any possibility of suggesting to the Court that a partial verdict not yet be taken but neither he nor anyone else objected to that procedure. (Tr. 5900-01).

** After the jury returned its verdict of guilty on Count One as to Hockridge, Petri and Easton, each juror responded affirmatively when asked if that was his or her verdict (Tr. 5901-04). Easton now claims that he was denied his right to have the jury also polled individually as to him alone. The short answer to this claim is that although given the opportunity to make this request at the time, Easton's trial counsel elected not to do so. Even assuming Easton had a right to have the jury polled as to the verdict on him alone, he waived it when he made no request that it be done and acquiesced in the poll which occurred.

conviction or acquittal, as many times as he desired as long as the jury's deliberations continued.* Such an unstable and capricious procedure was certainly not contemplated by the drafters of Rule 606(b). Further, to hold that partial verdicts are not within the protection of Rule 606(b) would be tantamount to a holding that they should never be taken.** This is so because the

* Petri blatantly suggests that this is indeed the law. (Br. at 25-26). We wonder how a defendant would react if a jury had returned a not guilty verdict on one count and later in deliberations tried to change that verdict to guilty.

** Easton's reliance upon *United States v. Pleva*, 66 F.2d 529 (2d Cir. 1933) is misplaced. In *Pleva*, a juror became seriously ill during deliberations and the trial court ordered him to be examined by two physicians, who reported that he was fit to continue deliberating. During one of the jury's appearance in open court during their deliberations, the juror indicated that he doubted that the charge against the defendant had been proven. After further deliberations the jury returned to the courtroom and indicated that it had found the defendant guilty. Just as the jury was polled on the verdict, but *before the verdict was recorded*, the juror informed the judge that he had voted for conviction because he was too ill to continue with his dissenting opinion.

In reversing the defendant's conviction, this Court found that the juror's "mind was simply overpowered by his concern for his own well-being and [he] was never persuaded on the merits to come into agreement. It was therefore, in law, no verdict at all . . ." *United States v. Pleva*, 66 F.2d at 533. This Court took pains to note, however, that the case was not one of permitting a juror to impeach a verdict. The Court specifically stated that

"we are not dealing with a situation where a verdict has been regularly returned and recorded with nothing at the time to show that it was other than the unanimous agreement of the jurors based on the evidence and the law. We leave untouched the question of what effect may be given to proof offered, after a verdict is recorded, of what transpired during the deliberations of the jury." 66 F.2d at 533.

This is exactly the situation here where for a full day after the verdict on Count One had been entered, the jury polled on that verdict and the verdict entered in the record, there was absolutely no indication that all twelve jurors had not in good faith and under the law rendered a unanimous verdict of guilty.

possibility always exists that after a partial verdict has been rendered, a juror, emotionally overwrought because of the severe strain of serious jury deliberations in which heated argument must not be uncommon, could always upset the partial verdict by claiming that he or she surrendered his or her honest convictions on the partial verdict. Trial courts would quite clearly be inhibited from taking any such "non-final" verdict.*

* In their futile effort to convince this Court that Rule 606(b) does not apply to partial verdicts, defendants make numerous references to the legislative history of the rule and to the writings of commentators. A reading of these authorities, however, makes it quite clear that they at no time deal with Rule 606(b) as it relates to partial verdicts subsequent to which a jury continues its deliberations. 3 *Weinstein's Evidence* §§ 606 [01]-[05] at 606(1)-(44); 6A *Moore's Federal Practice* § 59.08 [4], at 5.9(123)-(152); Wright, *Federal Practice and Procedure* § 554 at 488-96.

The only authority which the Government has located which bears resemblance to the facts here is *Vizzini v. Ford Motor Co.* 72 F.R.D. 132 (E.D. Pa. 1976). *Vizzini* involved a civil action for damages. Subsequent to the jury's verdict for the plaintiff on liability, the jury resumed its deliberations on the question of damages. During these deliberations, the trial court received a note from the jury indicating that the verdict on liability previously entered was a result of compromise. After it was determined that the jury could not agree on a verdict as to damages, the trial court declared a mistrial on the damage issue. 72 F.R.D. at 134-36.

Defendant moved for a new trial on the question of liability contending that Rule 606(b) only applied to prevent impeachment of verdicts after judgment had been entered and the jury discharged. 72 F.R.D. at 135-36.

In a meticulous opinion concerning the scope of Rule 606(b) the trial court held that the rule applied to bar the jury's statements as to their compromise on liability. It found "that no judgment was entered and that the same jury continued to deliberate on another aspect of the case should not impair the validity and finality of the jury's verdict on liability" 72 F.R.D. at 136.

Although a civil case, the principle of *Vizzini* is directly applicable here to make incompetent as evidence in a motion to set aside the verdict on Count One the statements of jurors 3 and 4.

Finally, if Judge Bonsal had declared a mistrial and discharged the jury as soon as he had received the note from juror number 3 indicating that she thought she had made a mistake on Count One, the jury would have been discharged at the time of the interview,* and even under the defendants' reasoning, Rule 606(b) would have applied to bar the jurors' statements to Judge Bonsal on a motion to set aside the verdict on Count One. As to Count One the defendants should be in no better position because the jury continued its deliberations.** *Vizzini v. Ford Motor Co., supra.*

In any event, even if the jurors' statements to Judge Bonsal could be considered competent evidence on a motion to set aside the verdict, Judge Bonsal was correct in finding that neither juror surrendered her honest conviction that there existed any reasonable doubt as to defendants' guilt, and this finding can not be reversed unless it is established as clearly erroneous. *Mattox v.*

* Easton's suggestion that it was improper for Judge Bonsal to interview the two jurors *in camera* is particularly disingenuous since defendant not only failed to object to the procedure, but encouraged an *in camera* meeting. (Tr. 5921-27). The trial court is permitted in its direction to interview a juror during deliberations. See *United States v. Zeelandloan*, 498 F.2d 352, 358 (2d Cir. 1974).

** Easton's alternative argument that Rule 606(b) is inapplicable here because it only bars juror "testimony" upon a motion to set-aside a verdict is meritless. His contention is based upon the fact that the jurors' statements are already in the record and therefore no juror "testimony" is being offered.

Easton omits from his discussion that part of Rule 606(b) which precludes the use of any "evidence of any statement by [a juror] concerning a matter about which he would be precluded from testifying . . ." See also *Domeracki v. Humble Oil and Refining Co.*, 443 F.2d 1245, 1247 (2d Cir.), *cert denied*, 404 U.S. 883 (1971); *Vizzini v. Ford Motor Co.*, 72 F.R.D. 132, 135 (E.D. Pa. 1976).

United States, 146 U.S. 140, (1892); *Morgan v. United States*, 399 F.2d 93, 97 (5th Cir. 1968), *cert. denied*, 89 S. Ct. 635, 1969; *United States v. Flynn*, 216 F.2d 354 (2d Cir. 1954), *see also United States v. Miller*, 381 F.2d 529, 539-40 (2d Cir. 1967). In fact, the record establishes that Judge Bonsal was clearly correct in finding that the jurors did not surrender their honest convictions.

A reading of the record of Judge Bonsal's interview with jurors 3 and 4 brings to mind this Court's admonition that it "is not possible to determine mental processes of jurors by the strict tests available in an experiment in physic; we have to deal with human beings, whose opinions are inevitably to some extent subject to emotional controls that are beyond any accessible scrutiny." *United States v. Grieco*, *supra*, 261 F.2d at 415-16.

The record of the interview (Tr. 5927-35) does not demonstrate, as defendants would have this Court believe, that jurors 3 and 4 were almost physically coerced into rendering their verdicts of guilty on Count One. On the contrary, it reflects the obvious emotional trauma which all conscientious jurors must endure during the course of deliberations. In this regard it also specifically reflects the second thoughts of the jurors.* For example, juror number 3, who Judge Bonsal noted was visibly shaken, said that she felt she had surrendered her honest conviction in

* It must be re-emphasized that for a full day after the jury rendered its guilty verdict on Count One and were individually polled on those verdicts there was no suggestion by anyone that any juror was concerned about her vote. Indeed, the poll of the jury established "for a certainty that each of the jurors approve[d] of the verdict as returned." *Humphries v. District of Columbia*, 174 U.S. 190, 194 (1899).

finding certain defendants guilty on Count One beyond a reasonable doubt. (Tr. 5931). Petri's brief fails to state that the juror also asked Judge Bonsal what constituted a "reasonable doubt." (Tr. 5931).^{*} Contrary to Petri's suggestion in his brief, Judge Bonsal did not repeat his instructions.^{**}

After the jurors had spoken to Judge Bonsal they returned to the deliberation room. Over the next two days the same jurors joined the other jurors in finding Hockridge, Petri and Easton guilty on Count Two, Petri guilty on Count Eight and these same defendants, along with Flynn, not guilty on a number of other counts.^{***}

These subsequent verdicts against the defendants demonstrate beyond question that whatever second thoughts jurors 3 and 4 had on Count One, such thoughts were thoroughly dissipated during the continuation of the deliberations. At no time after the interview with Judge Bonsal did any juror including numbers 3 and 4 indicate dissatisfaction with the guilty verdict on Count One.

^{*} At no point during the deliberations did the jury ask to have Judge Bonsal's charge on reasonable doubt repeated.

^{**} Juror number 4 told Judge Bonsal that prior to the verdict she "felt secure" about her guilty vote on Petri and Hockridge but that with respect to Easton she felt that she and three or four others were "railroaded." (Tr. 5930). Juror number 4, an actress, also said that on the first day of the deliberations she was "personally attacked incredibly by two members." (Tr. 5929). She then told Judge Bonsal that she knew that it was not unusual in this situation for jurors to become emotional and high strung. (Tr. 5930).

No other juror besides jurors 3 and 4 ever expressed any concern about the verdicts.

^{***} Easton's statement that the guilty verdict against him on Count Two was "soon" after Judge Bonsal interviewed jurors 3 and 4 (Br. at 33), is simply not so. The interview occurred at approximately 10 a.m. on February 16th. The verdict on Count Two finding Easton guilty was returned at approximately 2 p.m. on the next day, a full day and one-half following the interview. (Tr. 5902-27, 5967-71).

Recognizing the effect of the jury's further guilty verdicts against them, defendants offer various justifications: (1) Judge Bonsal "improperly coerced" jurors 3 and 4 into rendering a guilty verdict on other counts; (2) the further guilty verdicts were the result of the application by the jury of Judge Bonsal's limited *Pinkerton* instruction (notwithstanding the acquittals on other substantive counts); and (3) Judge Bonsal conveyed his opinion to jurors 3 and 4 that the defendants were guilty. Defendants' suggestions are speculation and are clearly belied by the record of the interview in which no reasonable person could possibly conclude that Judge Bonsal intimidated or coerced any juror. Since the jury acquitted on some of the substantive counts, defendants' claim that the only reason the jury convicted on another substantive count was because of the *Pinkerton* instruction is particularly unimpressive. The subsequent acquittals also belie defendants' claim that either Judge Bonsal or other jurors had coerced jurors 3 and 4 into the guilty verdicts on Count Two. Clearly, the further guilty verdicts, which are presumptively valid, *United States v. Rabbins*, 500 F.2d 650 (5th Cir. 1974), establish conclusively that defendants were not prejudiced by any alleged jury misconduct. See *Government of Virgin Islands v. Gencau*, 523 F.2d 140, 153-54 (3d Cir.), *cert. denied*, 424 U.S. 917 (1975).

B. The Defendants Are Not Entitled To a New Trial Because of Alleged Misconduct During the Trial

Defendants attempt to buttress their arguments by claiming that members of the jury were biased against them even before the jury began its deliberations. Judge Bonsal properly concluded that the jury was not prejudicial against the defendants.

On the fifth day of trial juror number 3 reported to Judge Bonsal that several of her fellow jurors expressed opinions that the defendants were guilty. Notwithstanding the statement, juror number 3 also said that these jurors were "not speaking about the case per se". (Tr. 566).

Shortly thereafter, Judge Bonsal interviewed *in camera* all of the jurors individually. Several said that they heard no expression of any kind concerning the subject. Six jurors reported that someone had made a passing reference to the subject but that it was said in jest.* Each of the jurors said he or she recognized the necessity of not talking about the case and would not form any opinions as to guilt or innocence until all the evidence was in. (Tr. 688-727).

Based on his thorough investigation into juror number 3's allegation, Judge Bonsal specifically found that no juror had any preconceived bias against the defendants and that they would treat all parties fairly and without prejudice. (Tr. 737-38).** His findings were clearly correct.

The trial judge has broad discretion in dealing with allegations of juror misconduct and bias and his decisions on these matters will only be reversed for a clear

* None of the defendants brought this significant fact to this Court's attention. Yet they take pains to repeat several times Judge Bonsal's statement that he didn't think the matter was serious.

** Easton asserts that during the interviews with the jurors, Judge Bonsal's questioning of the jurors amounted to "an admonition clearly tending to discourage any revelations of misconduct." (Br. at 10). This serious charge is entirely belied by the record of the interviews.

abuse of discretion. *United States v. Panebianco*, 543 F.2d 441, 449 (2d Cir. 1976); *United States v. Bando*, 244 F.2d 833, 848-49 (2d Cir.), *cert. denied*, 355 U.S. 844 (1957); *United States v. Flynn*, 216 F.2d 354, 372 (2d Cir. 1954), *cert. denied*, 348 U.S. 909 (1955); *United States v. Falange*, 426 F.2d 930, 933 (2d Cir.), *cert. denied*, 400 U.S. 906 (1970); *Gordon v. United States*, 438 F.2d 858, 874 (5th Cir.), *cert. denied*, 404 U.S. 828 (1971). The trial judge, who closely observes the conduct of the jury throughout the trial, is in the best position to determine whether a particular incident of alleged juror misconduct is prejudicial, *United States v. Bando*, *supra*, 244 F.2d at 848-49, as well as to determine the extent and type of investigation necessary. *Gordon v. United States*, *supra*, 438 F.2d at 874. As this Court has stated in *United States v. Flynn*, *supra*, 216 F.2d at 372:

"We are now asked to hold that the motions . . . for a further investigation of the jury . . . should have been granted. All of these matters were for the trial court's discretion which, unless we find it clearly abused, we should not disturb. . . . Especially is this so on a matter of such delicacy as that involving the retention or discharge of a sitting juror, in which right judgment depends so heavily on the impressions formed from direct contact."

Judge Bonsal certainly did not abuse his discretion. Shortly after juror number 3 made her allegation of juror misconduct, he conducted extensive *in camera* interviews with each of the jurors. Based on this he specifically found that the jurors were not prejudiced against the defendants. His findings were, of course,

confirmed when none of the jurors ever raised this subject again.*

Thus, the jury which convicted the defendants on certain counts, acquitted on other counts, and found defendant Flynn not guilty on all counts, was a discriminating and careful jury. See *United States v. Papadakis*, 510 F.2d 287, 300-01 (2d Cir.), cert. denied, 421 U.S. 950 (1975).

POINT II

The Evidence Against Hockridge Was More Than Sufficient.

Hockridge, alone among the defendants, contends that the evidence against him was insufficient to present his case to the jury.** His factual presentation is distorted

* This is not the first time that Judge Bonsal, an experienced trial judge, has been confronted with allegations of jury misconduct. In *United States v. Panebianco*, supra, it was alleged during the trial that a juror in open court actually stated aloud that a defense attorney was wasting his (the juror's) time. When this, along with other allegations of similar juror statements, was brought to Judge Bonsal's attention, he declined even to interview the jurors to determine the extent of their alleged bias because he felt it would do more harm than good. *United States v. Panebianco*, supra, 543 F.2d at 457.

In holding that Judge Bonsal acted properly this Court again stressed the trial judge's unique ability continuously to observe the jury in open court. *United States v. Panebianco*, supra.

**In his rendition of the facts, Easton makes numerous references to the weakness of the Government's proof against him and specifically attacks the credibility of Robert Fillet's testimony that Easton and not Fillet was responsible for preparing the false financial statements. (Br. at 21). But this proof was sufficient for the jury to convict him and to induce Easton, after he was found guilty but before he was sentenced, to cooperate with the Government. It was during this cooperation that Easton admitted that his trial testimony denying that he had prepared the false corporate financial statements submitted to Hockridge was

[Footnote continued on following page]

and he ignores the charges of which he was convicted, and the relevant law in reviewing a sufficiency of evidence claim. Thus, his argument lacks merit.

Hockridge rests his sufficiency argument on his contention that he was convicted of "embezzling money from Chemical Bank and of conspiring with the other defendants to do so." (Br. at 22). He further claims that the "thrust of the Government's case . . . was that Hockridge had embezzled a sum of money, namely, \$14,000, by virtue of a kickback which he allegedly received in connection with a loan to Today Stores [sic] Inc." (Br. at 6). Since Judge Bonsal struck all portions of the Indictment charging that Hockridge and his co-defendants embezzled money or conspired to embezzle money, we fail to comprehend his claim that the District Court should not have permitted the case to go to a jury on a bank embezzlement theory.* Nor do we understand Hockridge's

perjurious, and that the reason he perjured himself was to avoid conviction. The foregoing was recognized by Judge Bonsal at Easton's sentencing. Transcript of Sentencing, *United States v. Easton*, June 15, 1977 at 1-4. Indeed Easton's counsel stated at the time of sentencing:

"Easton's misfortune was to be a CPA. He prepared these financial statements and he denied that at the trial. He denied it because he was afraid that if he admitted it, he would be convicted.

"These financial statements were not based upon books or records that he prepared because there weren't any books and records, as Your Honor may recall . . ."

* Count One initially charged Hockridge and his co-defendants with conspiring to embezzle and misapply moneys of the Chemical Bank, to make false statements on loan applications and to make false statements in loan reports of the Chemical Bank. Count Two initially charged Hockridge with embezzling and misapplying \$1,145,000 in moneys of the Chemical Bank.

After the Government rested, Judge Bonsal struck that portion of the Indictment alleging that Hockridge and his co-defendants embezzled money and conspired to embezzle money. The case against Hockridge went to the jury without any allegation that Hockridge embezzled anything or conspired to do so. Judge Bonsal did not instruct the jury on embezzlement.

claim of insufficient evidence that a "conspiracy to defraud the United States was proved." (Br. at 24-25); Hockridge was never charged with conspiring to defraud the United States.

Based on the jury instructions it is clear that Hockridge was found guilty on Count One of participating in a conspiracy to misapply money of the Chemical Bank, to prepare and to assist in the preparation of false financial statements submitted to the Chemical Bank and the Bank of New York and to make false entries in reports of the Chemical Bank. He was found guilty in Count Two of misapplying the money of the Chemical Bank. The proof against him on these counts was more sufficient to support the jury's guilty verdicts.*

First, the Government established that Hockridge knew that the financial statements submitted to him in order to secure the loans were false and fraudulent. For example, Hockridge told Government witness, Marvin Berke, to tell Petri and Easton to stop submitting wildly inflated financial statements, which were used ostensibly as a basis for approving the twenty corporate loans Hockridge made to companies in Petri's "mini-conglomerate." (Tr. 1026). Thus, Hockridge was aware that the financial statements submitted to him were false, yet continued

* Hockridge's argument simply ignores the fundamental principle that in reviewing the sufficiency of the evidence this Court must view the evidence in the light most favorable to the Government. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *United States v. Falone*, 544 2d 607, 610 (2d Cir. 1976), *cert. denied*, 430 U.S. 916 (1977). He cavalierly disregards the jury's right to credit the Government's witnesses, and to reject all or portions of the defendant's testimony. *United States v. Frank*, 494 F.2d 145, 153 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974); *United States v. Taylor*, 464 F.2d 240, 242-45 (2d Cir. 1972); *United States v. Simon*, 425 F.2d 796, 799 (2d Cir. 1969), *cert. denied*, 397 U.S. 1006 (1970).

to grant loans. See *United States v. Cleary*, Dkt. No. 77-1107, slip op. 6329 (2d Cir., October 20, 1977).

Second, the Government established that Hockridge completed false documents in connection with a number of loans. Hockridge approved a \$50,000 loan to Cord Automobile Company, and the proceeds of that loan were immediately used to pay a \$50,000 loan Hockridge had previously approved for Simon & Flynn Communications, Inc. Both companies were controlled by Petri, and Hockridge falsely stated that the proceeds of the Cord loan were to be used for working capital. Several months later Hockridge approved a \$73,000 loan to Cine-Prime Corp., the parent of Petri's mini-conglomerate. Fifty thousand dollars of the loan were immediately used to pay off Hockridge's previous \$50,000 loan to the predecessor of Cine Prime Corp.,—Zavala-Riss. Despite Hockridge's report to the bank that the other \$23,000 was to be used for a legitimate business investment, the remaining \$23,000 was used to pay off Whitney's personal loans which Hockridge had previously approved. Hockridge also approved a \$75,000 loan to Oceanic Drug Co., another debt ridden corporation acquired by Petri. Through the use of several checking accounts Hockridge, Petri, and Easton were able to use these loan proceeds to pay off a loan Hockridge had approved previously for \$35,000 to Daniel Sheddric.* (GX 3m(1), 27g).

Third, the proof unequivocally showed that from the inception of the conspiracy until Hockridge was removed from his position of trust in late June 1972, he continu-

* Petri told a Government witness that Hockridge had been questioned by his superiors at the bank about the Sheddric loans. According to Petri he proposed to Hockridge that Hockridge approve a loan to one of Petri's companies and Petri would use that loan to pay the Sheddric loan. (Tr. 1572-76).

ously violated the Chemical Bank's rule against "group credits", which precluded him from approving loans in excess of his credit authority to two or more corporations controlled by the same party or parties without obtaining the approval of other lending officers.* (Tr. 539-43). His criminal intent was shown dramatically by the steps he undertook to conceal from his superiors the fact that he was violating the rule against group credits. Hockridge prepared for the loan files totally fictitious reports reflecting that he had spoken to various officers of the corporations before approving the loans. These were the individuals who were coerced by Petri and Easton into signing as officers corporate resolutions and corporate promissory notes. Numerous Government witnesses testified that Hockridge's reports for his loan files reflecting that he spoke to them in connection with the loans were fictitious. (Tr. 639-75, 1036-40, 1267-1304, 1406-10, 2742-57- 2719-24, 2405-25, 1943-46, 2313-16).

Finally, and possibly most significantly, the Government proved that Hockridge received bribes and gratuities for his approval of over one million dollars in loans to Petri's companies. In addition to what in effect was a payment of \$14,000 to Hockridge, he also received from Petri, Easton, Flynn and Whitney additional things of value including a \$3000 mink coat for his wife and the services of prostitutes for \$300 a week.** A Govern-

* From September 1971 through March 6, 1972, Hockridge was empowered to approve on his own authority unsecured loans of up to \$50,000. From March 6, 1972 his authority was \$75,000. He took full advantage of these authorities. On one occasion Petri bragged to a Government witness that he got Hockridge promoted at the Chemical Bank. (Tr. 1627-28; GX 81-81(c)).

** The \$14,000 payoff was made in the following manner: On March 8, 1972, Hockridge approved a \$75,000 loan to Todays Stores Services, Inc., a company which was incorporated on February 2, 1972. On March 9, 1972 Hockridge wrote a

[Footnote continued on following page]

ment witness also testified that he was told by Easton and Petri during the conspiracy that Hockridge was a silent partner in Petri's operation and was receiving Cine-Prime stock through a nominee. (Tr. 1626-38, 2018-20, 2805-19, 2885-95, 2903-06).

POINT III

Defendants' Other Arguments Do Not Entitle Them To A New Trial.

Easton and Hockridge assert that several other alleged errors warrant a new trial. Their arguments are meritless.

First, Hockridge argues that the Government violated its obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny by failing to reveal to the defense a current investigation of the Chemical Bank.

\$14,000 Chemical Bank check and made it payable to a New Jersey Bank at which he maintained an account. By internal bank procedure, he withdrew the \$14,000 from the checking account of Today's Stores Services into which the proceeds of the loan had gone the preceding day. The reverse side of the official check bore only Hockridge's checking account number into which the check had been deposited; it did not bear Hockridge's endorsement. Thus, when the check was returned to the Chemical Bank no one, except Hockridge, was aware that the funds had gone to his benefit. Of course the jury was entitled to reject Hockridge's testimony that the \$14,000 was a loan to him by Petri. This is especially so when the jury considered that on June 29, 1972 Hockridge wrote a letter to a representative of the bank denying that he had received "gratuities, payments or secret benefits" from Petri and his group. There was, of course, no mention of the fact that Hockridge received a \$14,000 "loan" from the proceeds of the Today Stores Services Loan. (GX 23). This proof certainly allowed the inference that there was no legitimate loan to Hockridge and that Hockridge was concealing a \$14,000 pay-off.

Judge Bonsal was entirely correct in finding that the defendants were not prejudiced by the failure to disclose the Chemical Bank investigation since it was clearly not relevant to the facts of this case. Order-Memorandum, April 12, 1977.

This investigation related to an entirely separate money-washing operation in several Chemical Bank branches and the failure of the Chemical Bank to comply with federal currency reporting requirements. The fact that other Chemical Bank employees were wrongdoers in an entirely unrelated scheme would not even tend to exculpate Hockridge for his own crimes. Moreover, Hockridge does not argue, as he cannot, that his knowledge of the investigation would have assisted him in impeaching Government witnesses who were representatives of the bank. Indeed, Hockridge himself does not make clear how the disclosure of the Chemical Bank investigation would have assisted him in obtaining an acquittal. See *United States v. Agurs*, 427 U.S. 97, 112-13 (1976).^{*} His conclusory assertion that it was part of his defense "to show the laxity of Chemical Bank procedures and thus disprove the allegations" of the Indictment (Br. at 33), is meaningless. Hockridge was not charged with negligence; he was charged with conspiring to misapply and the actual misapplication of over one million dollars of Chemical Bank's money. Inherent in these charges was the allegation that he acted know-

^{*} There is no claim that the Government knowingly used perjured testimony or that Hockridge made a specific request for disclosure of information relating to an investigation of Chemical Bank. Accordingly under *United States v. Agurs*, *supra*, 427 U.S. at 103-14, Hockridge is entitled to a new trial only if he could show that the allegedly omitted evidence created a reasonable doubt as to his guilt. On this record such a claim would be totally unfounded. See *United States v. Stassi*, 544 F.2d 579, 584 (2d Cir. 1976); *Brach v. United States*, 542 F.2d 4, 6, (2d Cir. 1976); *United States v. Corr*, 434 F.Supp. 408, 414 (S.D.N.Y. 1977).

ingly to injure and defraud the bank, a proposition which he now ignores.

Second, Hockridge argues that Judge Bonsal "did not adequately charge the jury on the necessity of finding a specific agreement, or at least a meeting of the minds with respect to the conspiracy charged." (Br. at 32). In making this argument Hockridge again ignores the record. Judge Bonsal specifically charged the jury that "a conspiracy is a combination or partnership, if you will, of two or more people to violate the law. . ." (Tr. 5816). Moreover, he charged that the Government must prove:

"that at least two or more persons came to a mutual understanding for the purposes of accomplishing the unlawful plan or scheme described in the conspiracy count which I just read to you. Here, of course, the fact that the defendants knew each other or may have associated with each other or may have discussed mutual or common business interests, that isn't enough to establish a conspiracy. Mere association isn't enough." (Tr. 5816-17).

These comprehensive instructions are ignored by Hockridge and are certainly sufficient in defining conspiracy. See *United States v. Rosenblatt*, 544 F.2d 36 (2d Cir. 1977); *United States v. Kahaner*, 317 F.2d 459 (2d Cir.), *cert. denied*, 375 U.S. 835 (1963); *United States v. Agueci*, 310 F.2d 817 (2d Cir.), *cert. denied*, 372 U.S. 1962).

Third, Easton argues that Judge Bonsal improperly admitted proof of the extraneous crimes that Petri and Easton had not withheld the requisite taxes from their employees' paychecks. Properly viewed this was not evidence of a similar offense, but was part of the Government's direct proof showing how the conspiracy operated. This proof was admitted to establish the disputed fact

that the corporations formed by Petri were formed solely for the purpose of getting additional loans from Hockridge and that they were, therefore, only paper corporate entities. That Petri and Easton did not withhold taxes from their employees' paychecks, which were drawn on the accounts of these paper corporations, supported the inference that the corporations were not formed to be viable entities; on the contrary, many of them were shells formed exclusively to get additional loans.

This Court has consistently held that evidence of other crimes is admissible "unless offered solely to prove criminal character or disposition or the proffered evidence is of such a highly prejudicial nature as to overwhelm its probative value." *United States v. Magnano*, 547 F.2d 431, 435 (2d Cir. 1976), *cert. denied*, 429 U.S. 1091 (1977). See also *United States v. Cavallero*, 553 F.2d 300, 305 (2d Cir. 1977); *United States v. Papadakis*, 510 F.2d 287 (2d Cir.), *cert. denied*, 421 U.S. 950 (1975). The challenged evidence tended to prove something which the defendants of necessity disputed from the beginning, that is, that the corporations operating within Petri's "mini-conglomerate" operated in name only for the purpose of obtaining loans from the Chemical Bank. See, *United States v. Campanile*, 516 F.2d 288, 292 (2d Cir. 1975). Moreover, the evidence could have had no impermissible prejudicial impact in that it was not highly emotional evidence whose introduction could inflame a jury's passion against the defendants. *United States v. Robinson*, 560 F.2d 507, 514 (2d Cir. 1977) (*en banc*).

Fourth, Easton suggests that Judge Bonsal erroneously permitted the Government to elicit from him on cross-examination the fact that his net worth increased by over two million dollars from June 1972 to 1974. (Tr. 5033). The failure of Easton to object to the question

at trial constitutes a waiver of the issue on appeal.* (Tr. 5033). Moreover, the line of questioning was proper. Easton and his co-defendants received through corporations of which they were officers, in excess of \$1,100,000 in loans from the Chemical Bank, much of which were never accounted for. Although Easton specifically denied that he received any of this money, except in the form of salary checks, (Tr. 5033), the Government proved that he was diverting some of the loan proceeds to a personal checking account he maintained at the Republic National Bank. (Tr. 4890-95). Since large amounts of the loan proceeds remained unaccounted for up to the trial, the Government was certainly permitted to make inquiry of Easton on cross-examination as to whether Easton used portions of this money to finance certain successful business ventures which culminated in a great increase in his net worth. (Tr. 5003-34). Cf. *United States v. Jackskion*, 102 F.2d 683, 684 (2d Cir.), *cert. denied*, 307 U.S. 635 (1939).

Finally, Easton argues that the admission of the numerous corporate financial statements was error since they were not authenticated and were hearsay. These financial statements, which formed the basis for the many corporate loans approved by Hockridge, were properly admitted.

The financial statements were admitted into evidence as part of the various corporate loan files in the possession of the Chemical Bank, which maintained them in the ordinary and regular course of its business. (Tr. 116-17). Hockridge himself testified that the financial

* See *United States v. Fuentes*, Dkt. No. 77-1083, slip op. 5883, 5890 (2d Cir., Sept. 14, 1977); *United States v. Braunig*, 553 F.2d 777 (2d Cir.), *cert. denied*, 45 U.S.L.W. 3790 (June 6, 1977); *United States v. Indiviglio*, 352 F.2d 276 (2d Cir. 1965) (*en banc*), *cert. denied*, 383 U.S. 907 (1966).

statements admitted were the ones given to him during the course of the conspiracy. (Tr. 3542-44). Moreover, once again Easton never claimed at trial that the documents were not properly authenticated. A defendant should not be able to obtain a new trial when he failed to object to the authenticity of a document received as evidence, and the Government may well have been in a position to provide a firmer basis of authenticity if alerted to the problem at the time of trial. See *United States v. Fuentes*, Dkt. No. 77-1083, slip op. 5883 (2d Cir., Sept. 14, 1977).

As to Easton's contention that the financial statements should have been excluded based on the hearsay rule, he again misses the point. The financial statements were not admitted to prove the truth of what was stated in them; on the contrary, it was the Government's position that the financial statements were false.*

* Although Easton, Petri's CPA, denied at trial preparing the financial statements charged as false in the Indictment, he later admitted that he had in fact perjured himself on these issues in an effort to avoid conviction. (Minutes of Sentencing, *United States v. Easton*, June 15, 1977 at 3-4).

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

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